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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,974	03/01/2006	Shane Robert McGill	AMK-5600-8	2889
23117 7590 06/25/2010 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER JANCA, ANDREW JOSEPH				
ART UNIT		PAPER NUMBER		
1797				
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06/25/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,974

Applicant(s)

MCGILL, SHANE ROBERT

Examiner

Andrew Janca

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-29, 31, 34, 43, 49-53, 56, 58, 76 and 82-86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-29, 31, 34, 43, 49-53, 56, 58, 76 and 82-86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/13/10 has been entered.

Response to Arguments

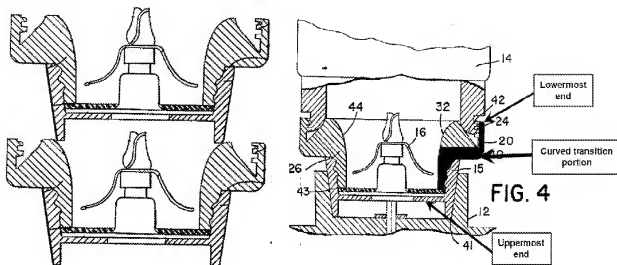
2. Applicant's arguments with respect to claims 25-29, 31, 34, 43, 49-53, 56, 58, and 76 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 25-28, 31, 34, 43, 49-52, 56, 58, 76, and 82-86 are rejected under 35 USC 103(a) as unpatentable over US 4,889,248 to Bennett in view of US 5,918,761 to Wissinger.



5. With regard to independent claim 25, Bennett teaches a blending apparatus for a high speed blending operation comprising a container base 14 and a container lid 10-15, the container lid having mounted thereon blending means 16 arranged for a high speed rotation, the blending means extending through the lid and having, at one end, means 12 for connection to a drive motor external to the container and, at the other end, a blending element 16 for blending contents of the container when the drive means is operated, the blending means comprising an unnumbered shaft portion, visible in figure 2, locatable through an opening in the lid and incorporating the connection means at its other end inside case 12 where it connects to the motor, and a blending element portion 16 associated with the shaft portion for rotation therewith, the container lid comprising a rim portion 22-30 defining a circumferential slot 22-30 into which the top edge of the container 14 is located when the lid and container are assembled together, wherein the rim portion is formed with successive, oppositely directed circumferential portions (solid projections upward, hollow indentation pointing downward), a first of said portions lying in contact with or closely adjacent an inner side wall of the container when the lid and

container are assembled together, and defining one side of the slot, and an outwardly convex portion 15 is formed on the lid within the rim portion, the convex portion including the opening through which the blending means is located, the blending element includes blades 16, one of (the two upward pointing blades in figure 2, the two lower pointing blades in figure 2) arranged for operation and positioned entirely within the outwardly convex portion of the lid (figures 1-4), and where the slot includes an outer portion arranged to extend around a top outer edge of the container and an inner portion arranged to extend into the container. Bennett does not explicitly teach that the inner portion should extend over a greater distance than the outer portion in the axial direction of the container, such distance being between two and twelve times the distance of the outer portion. However, Wissinger teaches a container 10 having a lid 12, the container lid comprising a rim portion 76 defining a circumferential slot into which the top edge 52 of the container is located when the lid and container are assembled together, wherein the rim portion is formed with successive, oppositely directed circumferential portions, a first of said portions lying in contact with or closely adjacent an inner side wall 30-38 of the container when the lid and container are assembled together, and defining one side of the slot, and an outwardly convex portion 82 is formed on the lid within the rim portion, and where the slot defined by rim portion 76 includes an outer portion arranged to extend around a top outer edge of the container and an inner portion arranged to extend into the container; and further teaches that the inner portion should extend over a greater distance than the outer portion in the axial direction of the container, such distance being between two and

twelve times the distance of the outer portion (figures 1-3). Bennett and Wissinger are analogous arts, being from the same field of endeavor, the design of specialized lids for THERMOS™ thermal insulating containers (Bennett 3:65-47; Wissinger patent, Assignee). It would have been obvious to one of ordinary skill to have made the inner protruding portion of the rim of Bennett's lid protrude inward a greater extent, in particular two to twelve times the distance of the outer portion, as do Wissinger: the motivation would have been to form a better seal between lid and container (Wissinger 4:31-32).

6. With regard to independent claim 49, Bennett teaches a container lid 10-15 for mounting on an open ended beverage container, the container lid having located thereon blending means 16 arranged for a high speed rotation, the blending means extending through an opening in the lid and having, at one end, means 12 for connection to a drive motor external to the container and, at the other end, a blending element 16 for high speed blending of contents of the container when the drive means is operated, the container lid comprising a rim portion 22-30 defining a circumferential slot 22-30 into which the top edge of a container 14 is located when the lid and container are assembled together, wherein the rim portion is formed with successive, oppositely directed circumferential portions (solid projections upward, hollow indentation pointing downward), a first of said portions lying in contact with or closely adjacent an inner side wall of the container when the lid and container are assembled together, and defining one side of the slot, and wherein the slot includes an outer portion arranged to extend around a top outer edge of the container and an inner portion arranged to extend

into the container. Bennett does not explicitly teach that the inner portion should extend over a greater distance than the outer portion in the axial direction of the container, such distance being between two and twelve times the distance of the outer portion.

However, Wissinger teaches a container 10 having a lid 12, the container lid comprising a rim portion 76 defining a circumferential slot into which the top edge 52 of the container is located when the lid and container are assembled together, wherein the rim portion is formed with successive, oppositely directed circumferential portions, a first of said portions lying in contact with or closely adjacent an inner side wall 30-38 of the container when the lid and container are assembled together, and defining one side of the slot, and an outwardly convex portion 82 is formed on the lid within the rim portion, and where the slot defined by rim portion 76 includes an outer portion arranged to extend around a top outer edge of the container and an inner portion arranged to extend into the container; and further teaches that the inner portion should extend over a greater distance than the outer portion in the axial direction of the container, such distance being between two and twelve times the distance of the outer portion (figures 1-3). Bennett and Wissinger are analogous arts, being from the same field of endeavor, the design of specialized lids for THERMOS™ thermal insulating containers (Bennett 3:65-47; Wissinger patent, Assignee). It would have been obvious to one of ordinary skill to have made the inner protruding portion of the rim of Bennett's lid protrude inward a greater extent, in particular two to twelve times the distance of the outer portion, as do Wissinger: the motivation would have been to form a better seal between lid and container (Wissinger 4:31-32).

7. With regard to independent claim 82, Bennett teaches a container lid 10-15 for mounting on an open ended beverage container, the container lid comprising mixing means 16 extending through an opening in the lid and having, at one end, means 12 for connection to a drive motor external to the container and, at the other end, a mixing element 16 for high speed blending of contents of the container when the drive motor is operated; and a rim portion 22-30 defining a circumferential slot 22-30 into which the top edge of a container 14 may be located when the lid and container are assembled together, wherein the rim portion is formed with successive, oppositely directed circumferential portions (solid projections upward, hollow indentation pointing downward), a first of said portions lying in contact with or closely adjacent an inner side wall of the container when the lid and container are assembled together, and defining one side of the slot, the lid includes an outwardly convex portion 15 formed within the rim portion, the convex portion including the opening through which the blending means extends, the blending element includes blades 16, one of (the two upward pointing blades in figure 2, the two lower pointing blades in figure 2) arranged for operation and positioned entirely within the outwardly convex portion of the lid (figures 1-4), and where the slot includes an outer portion arranged to extend around a top outer edge of the container and an inner portion arranged to extend into the container. Bennett does not explicitly teach that the inner portion should extend over a greater distance than the outer portion in the axial direction of the container, such distance being between two and twelve times the distance of the outer portion. However, Wissinger teaches a container 10 having a lid 12, the container lid comprising a rim portion 76 defining a

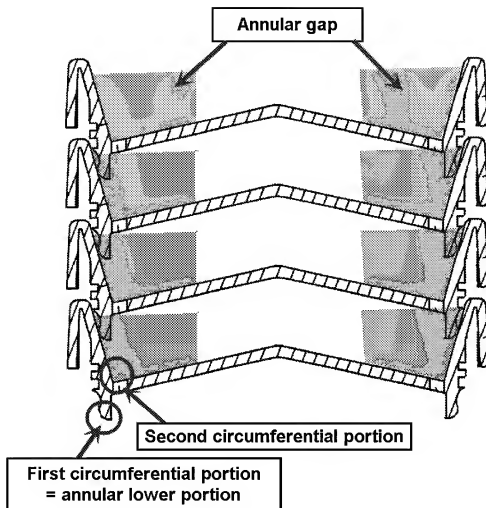
circumferential slot into which the top edge 52 of the container is located when the lid and container are assembled together, wherein the rim portion is formed with successive, oppositely directed circumferential portions, a first of said portions lying in contact with or closely adjacent an inner side wall 30-38 of the container when the lid and container are assembled together, and defining one side of the slot, and an outwardly convex portion 82 is formed on the lid within the rim portion, and where the slot defined by rim portion 76 includes an outer portion arranged to extend around a top outer edge of the container and an inner portion arranged to extend into the container; and further teaches that the inner portion should extend over a greater distance than the outer portion in the axial direction of the container, such distance being between two and twelve times the distance of the outer portion (figures 1-3). Bennett and Wissinger are analogous arts, being from the same field of endeavor, the design of specialized lids for THERMOS™ thermal insulating containers (Bennett 3:65-47; Wissinger patent, Assignee). It would have been obvious to one of ordinary skill to have made the inner protruding portion of the rim of Bennett's lid protrude inward a greater extent, in particular two to twelve times the distance of the outer portion, as do Wissinger: the motivation would have been to form a better seal between lid and container (Wissinger 4:31-32).

8. The additional elements of claims 26 and 50, including that the outwardly convex portion 15 is of curvilinear dome shape and the blending means 16 is located centrally thereof, are taught by Bennett: the outwardly convex portion is domelike in shape, and includes internal curvilinear surfaces (figures 1-4).

9. The additional elements of claims 27 and 51, including that the outwardly convex portion 15 lies substantially level with the upper end of the container, when the lid is assembled on the open end of the container, are taught by Bennett: the outwardly convex portion has a flat inner top (figure 4).

10. The additional elements of claims 28 and 52, including that the outwardly convex portion 15 projects above the upper edge of the container, when the lid is assembled on the open end of the container, are taught by Bennett (figure 4); and also by Wissinger (figure 3).

11. The additional elements of claim 31, including that container lids assembled with the blending means are arranged to be nestable or stackable with other container lids, when not assembled with the container bases, one container lid being located inside another, are taught by Bennett: the lids may be stacked (see annotated figure 4); and also by Wissinger (annotated figure 3, below).



12. The additional elements of claim 34, including that the inner portion 32 extends between two and twelve times the (horizontal) distance of the outer portion 20, are taught by Bennett (figure 4); and (vertical distance) also by Wissinger (figure 3).

13. The additional elements of claims 43 and 56, including that the container lid 10-15 includes a product access opening 28 with closure means 15, the access opening being capable of accessing the contents of the container after blending, are taught by Bennett: after blending, element 15 may be unscrewed from the remaining portion 10 of the lid to access the container's contents, if desired (figures 2-4). It has been held that

apparatus claims must be structurally distinguishable from the prior art in terms of structure, not function. See *In re Danley*, 120 USPQ 528, 531 (CCPA 1959); and *Hewlett-Packard Co. v. Bausch and Lomb, Inc.*, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

14. The additional elements of claim 58, including that the rim 20-32 includes slits 18 extending in a generally axial direction, are taught by Bennett (figure 3).

15. The additional elements of claims 76, 83, and 84, including that a second of said circumferential portions forms part of the convex portion of the lid, and wherein the lid includes an upper portion having an annular gap, the lid further including an annular lower portion which is intended to locate in the annular gap of a lid of the same kind and configuration when two or more of said lids assembled with their respective blending means are stacked one on top of another, the circumferential portions defining said annular gap and said annular lower portion, are taught by Wissinger (see figure 3, annotated above).

16. The additional elements of claims 85 and 86, including that the product access opening 28 is located in said outwardly convex portion 15, are taught by Bennett: product access opening 28 (figure 3), located at the bottom of piece 20 in figure 4, when covered by closure means 15 which forms the outwardly convex part is also located within it (figure 4).

17. Claims 29 and 53 are rejected under 35 U.S.C. 103(a) as being obvious over US 4,889,248 to Bennett in view of US 5,918,761 to Wissinger as applied to claim 49 above, and further in view of US 6,736,538 B2 to Bittner. Bennett and Wissinger teach

that the lid may be outwardly convex, but do not explicitly teach that it may be semi-spherical or part-semi-spherical. However, Bittner teaches a blending apparatus for a high speed blending operation comprising a container base 20 and a container lid 30, the container lid having mounted therethrough blending means 2-10 arranged for a high speed rotation, the blending means extending through the lid and having, at one end, means for connection to a drive motor external to the container and, at the other end, a blending element 10 for blending contents of the container when the drive means is operated, the blending means comprising a shaft 2 locatable through an opening in the lid and incorporating the connection means at its other end, and a blending element portion 10 associated with the shaft portion for rotation therewith, and an outwardly convex portion 30 is formed on the lid within the rim portion, the convex portion including the opening through which the blending means is located, the blending element includes blades 12-14 which may be arranged for operation and positioned entirely within the outwardly convex portion of the lid (figures 1, 3B): and further teaches that the outwardly convex portion may be semi-spherical (figure 3B). It would have been obvious to one of ordinary skill in the art to make the outwardly convex portion of the blending cup of Bennett and Wissinger semi-spherical: the motivation would have been to reduce splatter (Bittner 1:48-50; figure 3B).

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Janca whose telephone number is (571) 270-5550. The examiner can normally be reached on M-Th 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on (571) 272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AJJ

/DAVID L. SORKIN/
Primary Examiner, Art Unit 1797